



United States Department of the Interior

MINERALS MANAGEMENT SERVICE

Royalty Management Program
P.O. Box 25165
Denver, Colorado 80225-0165

Carlyle
12/4/98

IN REPLY REFER TO

AD/PSO 99-005-3/6/12
Mail Stop 3060

Mr. Linden C. Smith
Barents Group LLC
2001 M Street, N.W.
Washington, D.C. 20036

DEC 14 1998

Dear Mr. Smith:

This is in response to your October 23, 1998, Freedom of Information Act (FOIA) request (copy as Enclosure 1). We have recently finished reviewing and making the necessary redactions on all of the responsive material. We are withholding certain information in these materials under FOIA Exemptions 4 and 5.

Our policy, in keeping with the spirit of FOIA, is the prompt release of records to the greatest extent possible. At the same time, we must protect the rights of individuals and the administrative processes surrounding such rights. The FOIA regulations require us to withhold information protected under FOIA exemptions at 43 CFR § 2.13 (1997) when disclosure is prohibited by statute or Executive Order, or if sound grounds exist to apply an exemption.

EXEMPTION 4

We have determined that the materials containing MMS Form 2014 sales/royalty values are privileged and confidential. This value information is being withheld pursuant to the "second prong" of Exemption 4 of FOIA, which exempts from disclosure "... trade secrets and commercial or financial information obtained from a person and privileged or confidential." We have replaced the deleted information with the marking "X-4."

The "third prong" of Exemption 4 of FOIA protects RIK sales/royalty value and pricing data from disclosure because the requested information would result in an impairment to the administrative efficiency and effectiveness of the MMS in its efforts to enter into future RIK negotiations and contracts. MMS believes the success of the RIK program relies on our nondisclosure of negotiated prices and pricing formulas. We maintain companies would avoid the RIK program if they believed their pricing data would be made publicly available through FOIA. As a consequence, MMS would experience a decline in desirable companies participating in the RIK program. Thus weakening MMS's ability to obtain the best price and terms in future RIK negotiations and contracts.

Our policy is to employ Exemption 4 of FOIA by withholding from public release any financial information that could jeopardize the financial standing and/or competitive position of those associated with this information. We believe that the public release of this information could jeopardize the competitive and financial standing of those parties associated with this information.

Rm File

EXEMPTION 5

We are withholding our RIK bids and RIK minimum accepted bid formulas because they reflect the personal opinions, recommendations and advice of staff members and were used to arrive at a final agency decision. We have replaced the deleted information with the marking "X-5." Disclosure of such material would inhibit the open and candid expression of such views in similar future deliberations, confuse the public as to the official agency position on an issue, and have a detrimental effect on our decisionmaking process. Sound grounds exist for withholding the materials under Exemption 5 of FOIA (5 U.S.C. 552(b)(5)), which permits an agency to withhold "... interagency or intra-agency memorandums or letters that would not be available by law to a party ... in litigation with the agency."

The Supreme Court has indicated that Exemption 5 may incorporate virtually all civil discovery privileges; if a document is immune from civil discovery, it is similarly protected from mandatory disclosure under the FOIA. Rule 501 of the Federal Rules of Evidence provides for courts to create privileges as necessary, there exists the potential for new privileges to be applied under Exemption 5.

Further, in Federal Open Market Committee v. Merrill, the Supreme Court found an additional privilege incorporated within Exemption 5 based upon Federal Rule of Civil Procedure 26(c)(7), which provides that "for good cause shown ... a trade secret or other confidential research, development or commercial information" is protected from discovery. The theory behind this privilege is ... "that the Government will be placed at a competitive disadvantage or that the consummation of the contract may be endangered." We maintain that any disclosure of our accepted Royalty-in-Kind (RIK) bids, RIK negotiated prices, and RIK pricing formulas would significantly weaken the Government's ability to negotiate and secure the best RIK contract on all our future RIK contract and price negotiations. Any harm to MMS will likely no longer exist when the RIK contracts expire or are terminated. However, the submitters may still have an interest in protecting the pricing data.

For your reference and further information regarding the Federal Open Market Committee v. Merrill citation, Enclosure 2 contains two pages from the U.S. Department of Justice, Office of Information and Privacy manual titled, "Freedom of Information Act Guide & Privacy Act Overview," September 1998 edition.

Enclosure 3 contains 141 pages, of responsive material for your FOIA request. The responsive materials were compiled from various sources within MMS. The responsive materials are being released as a comprehensive standard package for all inquiries to our RIK Pilot programs. We were not able to provide any responsive material for your request Item No. 4. Discussions were conducted about financial solvency, however, no documentation was produced in any media format that is responsive to Item No. 4.

In accordance with 43 CFR § 2.20(a)(1) (1997), we assess user fees to fulfill a FOIA request. Personnel charges cover our costs to conduct document searches and to review, identify, and delete privileged and confidential information. Other charges cover the direct costs of providing the material. Standard charges are:

Mr. Linden C. Smith

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Professional support	\$18.60/hour	Computer/mag tapes	\$25.00/each
Clerical support	\$ 9.20/hour	CD-ROM	\$ 6.00/each
Photocopies	\$.13/page	8 mm. tapes	\$10.00/each
Microfiche	\$.08/page	Computer Diskettes	\$ 1.25/each
Computer (CPU) time		\$35.00/minute (\$25.00 minimum)	

Fees for overdue bills include a \$35 administrative charge plus interest at the prevailing Treasury rate.

Enclosure 4 is a bill for \$312.07, the cost to fulfill your request.

As the Royalty Management Program FOIA Officer, I am the official denying portions of your request. If you disagree with this determination, you have the right under Department of the Interior regulations at 43 CFR § 2.18 (1997) to appeal to:

Freedom of Information Act Appeals Officer
Office of Information Resources Management
Mail Stop 5312
1849 C Street, N.W.
Washington, D.C. 20240

Your written appeal must be delivered to the FOIA Appeals Officer no later than 20 working days from the date of this letter. The appeal must include copies of your original request and of the initial denial. To expedite the appellate process and to ensure full consideration of your appeal, include a brief statement as to why you believe this decision is in error. Both the envelope containing the appeal and the face of the appeal itself should include the legend "FREEDOM OF INFORMATION APPEAL."

If you have any questions, please contact me at (303) 231-3013.

Sincerely,

Gregory K. Kann
Freedom of
Information Act Officer

Enclosures

bcc: RM File (705-16)
RM Chron/Lkwd
MMS FOIA Officer, MS 2200 (e.t.) ✓
RMP FOIA Officer, MS 3062
PSO Chron, MS 3060
PMI FOIA Coordinator, MS 3130 (h.c.) ✓ - letter with 1st page of enclosure 3 only.
LMS:RMP/AD/PSO:MS3060:MParker:12/09/98:231-3013:p:\FOIA\99-005-3.wp
Finalized:lpm:12/11/98